General tax update for financial institutions in Asia Pacific

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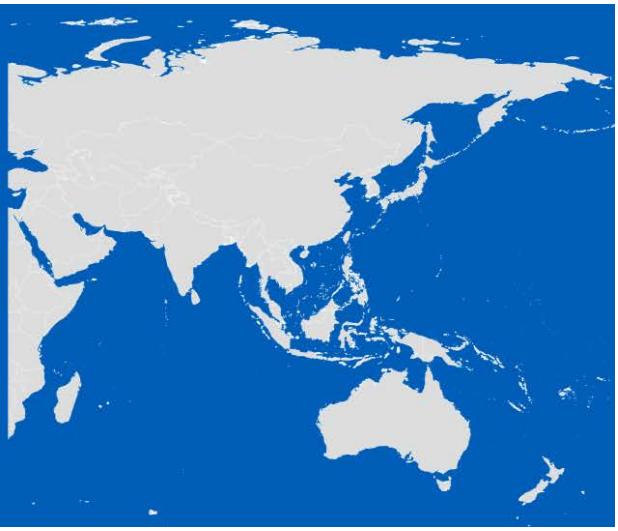
There continues to be rapid development in the law and practice across the regions, with many jurisdictions making substantial changes to local tax laws.



Highlights

- Exposure Draft legislation to implement the regulatory frameworks for Corporate Collective Investment Vehicles and the Asia Region Funds Passport
- Announced changes to enhance the Attribution Managed Investment Trust regime

- SAT issued notices concerning implementation matters on discounting business of commercial and interbank bills
- State Council issued notice concerning the administrative regulations on supervision of financing guarantee companies
- CSRC released regulation on liquidity risk management of publicly-offered open-end securities investment funds
- AMAC released measures for compliance management of securities investment fund management companies

- Consultation report on BEPS laying out the foundation for Hong Kong's transfer pricing regime released

- Central Board of Direct Taxes relaxes eligibility conditions to investment funds set-up by Category I or II Foreign Portfolio Investors
- Capital gains arsing to Netherlands entity on sale of shares of its Indian subsidiary is not taxable in India
- Transfer of shares by Mauritian company under the group reorganisation is not taxable in India

- Amended Controlled Foreign Company Rules
- New form DGT-1 for non-resident taxpayers

- 2017 Tax revision proposal announced in August 2017

- Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) Rules 2017
- Country-by-Country Reporting in Malaysia

- New regulations on Corporate Tax, VAT and Personal Tax
- Mauritius signed the multilateral instrument implementing the treaty related BEPS provisions

- BEPS - final Government decisions on proposals
- 2017 New Zealand General Election

- Senate Bill No. 1592 and House Bill No. 5636 – Tax Reform for Acceleration and Inclusion released

- Revision to the Financial Sector Incentive Schemes
- Goods and Services Tax remission on expenses for prescribed funds managed by prescribed fund managers in Singapore

- The new Inland Revenue Act was passed on 7 September 2017 and will take effect from 1 April 2018
- The new Foreign Exchange Act released

- Proposed Taiwan income tax reform

- New Financial Instruments Accounting Standard released
- Draft legislation on functional currency released

- New regulations on buy, sell non-performing loan (NPL) and NPL resolution of Vietnam Asset Management Company
- New regulations on bank guarantee
- New regulations on methods of calculating interests on deposit in deposit and credit activities between credit institutions and customers

Australia

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Legislative developments

Enhancements to the Attribution Managed Investment Trust ("AMIT") regime

On 19 July 2017, the Minister for Revenue and Financial Services announced a number of technical changes to the AMIT regime which was enacted in 2016 (including some that had been sought by the managed investment industry), and other integrity measures.

The managed investment industry has a number of other issues on its wish-list for the AMIT regime, which will continue to be the subject of discussions with Treasury and the Australian Taxation Office ("**ATO**").

Clarification of the Investment Manager Regime

On 19 July 2017, the Minister for Revenue and Financial Services announced that the Federal Government will consult on whether a legislative amendment is required to the Investment Manager Regime ("**IMR**") to ensure that the engagement of an Australian independent fund manager will not cause a fund that is legitimately established and controlled offshore to be treated as an Australian resident for tax purposes. Any legislative amendment would apply retrospectively from the start of the IMR in 2015.

The intention of the IMR is that when a foreign investor invests in Australia through a foreign fund or an independent Australian fund manager, the foreign investor should be in the same tax position as if it had invested directly in Australia.

Corporate Collective Investment Vehicles

On 25 August 2017, Treasury released an Exposure Draft ("**ED**") of the framework legislation to implement a new corporate collective investment vehicle ("**CCIV**") regime.

The CCIV is intended to be a vehicle that will be recognisable internationally by foreign investors, and has broadly been modelled on equivalent foreign collective investment vehicle regimes, primarily the Open Ended Investment Company of the UK. CCIVs will allow investors to invest in a tax-transparent fund, whose assets are held in a corporate structure (which is more familiar to foreign investors than a trust structure). This type of vehicle can also be suitable for a multi-class corporate structure consisting of multiple sub-funds.

The material released by Treasury so far is framework legislation which sets out the foundations for the regulatory changes required to accommodate the CCIV. However, there are some concerns with the draft proposal including:-

- Certain features of the proposed wholesale CCIV regime (including, for example, the requirement for the corporate director to be an Australian public company that is registered as a CCIV and that is subject to restrictions that the trustee of a wholesale managed investment schemed ("**MIS**") is not subject to) would present additional cost and complexity compared to the current requirements for a wholesale MIS; and
- For a retail fund, the requirement to have a separate and independent depositary entity with supervisory responsibilities, in addition to the corporate director, would again impose a risk of additional costs compared to the structures currently in use.

Once this framework has been consulted on and refined, the Government will then draft the consequential changes that are required to be made to the tax law. Based on the material released so far, the guiding principle for the consequential tax law changes will be that there should be tax-neutral outcomes as between a CCIV and a Managed Investment Trust. It is hoped that the tax changes would include tax roll-over relief for managed funds wishing to transition to a CCIV.

Asia Region Funds Passport

On 25 August 2017, Treasury released ED legislation for Australia's adoption of the Asia Region Funds Passport (the "**Passport**") as part of the package of reforms to strengthen the international competitiveness of Australia's funds management sector. The ED proposes to implement the Passport's regulatory framework into Australian domestic law by legislative instrument and amendments to the Corporations Act 2001.

The Passport will be a regulatory framework allowing the cross-border marketing and distribution of retail managed funds within a "single market" of participating Association of Southeast Asian Nations ("**ASEAN**") jurisdictions. It is anticipated that the Passport will allow Australia to more effectively export its funds management capability throughout the region.

Currently, Australia, Japan, Korea, New Zealand and Thailand are signatories to the Passport's Memorandum of Cooperation ("**MOC**"), which took effect on 30 June 2016. Pursuant to the MOC, the Passport will come into effect from 1 January 2018 (provided that at least two of the participating countries pass the requisite domestic legislation).

One of the significant challenges in implementing the Passport will be achieving tax neutrality (so that domestic and foreign funds offered to investors in a single jurisdiction are treated similarly for tax purposes). Given the diversity of local tax laws in the participating jurisdictions, achieving alignment on an agreed tax framework is a fundamental issue that will need to be addressed.

The Australian tax framework was not included in the MOC or in the ED that was released in August. Draft consequential amendments to the tax law are expected to follow in the coming months.

ED legislation regarding the tax consolidation treatment of entities holding securitised assets

On 11 September 2017, Treasury released ED legislation that aims to give effect to various measures for improving the integrity of Australia's tax consolidation regime.

One of the measures in the ED (the "securitised assets" measure) is specifically relevant for financial institutions.

Broadly speaking, the securitised assets measure is intended to remove anomalies that arise when an entity holding securitised assets joins or leaves a tax-consolidated group. Under current law, anomalies arise because the securitised asset and the corresponding liability are not recognised in the same way under the tax cost setting rules of the consolidation regime.

Specifically, the proposed legislative amendments will modify the entry and exit tax cost setting rules by removing double benefits or double detriments that can arise when an entity holding securitised assets joins or leaves a tax-consolidated group.

Subject to transitional rules, this measure is proposed to apply to entities joining or leaving a tax-consolidated group from:

- for Authorised Deposit-taking Institutions and financial entities - 13 May 2014; and
- for all other entities - 3 May 2016.

Taxation rulings and determinations

Draft Practical Compliance Guideline PCG 2017/D16 – Propagation arrangements

On 21 August 2017, the ATO released draft Practical Compliance Guideline PCG 2017/D16, which now provides welcome public guidance at an industry level that the ATO will accept the custodians of large superannuation funds adopting the practice of actively selecting

parcels of shares for sale (what the industry calls "propagation"), rather than being restricted to specific methods (e.g. the "first-in-first-out" method).

Different parcels of shares held by a fund have different tax attributes, for example, the amount of unrealised gains/ losses, the ability to qualify for the one-third discount on capital gains tax ("**CGT**"), and the ability to obtain franking credits. The largest controllable part of a superannuation fund's tax liabilities is CGT.

For these reasons, it is generally expected that funds will closely examine strategies such as propagation arrangements, which will assist in both deferring the payment date for CGT and ensuring that the one-third CGT discount is accessed wherever possible.

In the past, most funds that started to use propagation arrangements sought private rulings from the ATO to confirm that they are acceptable. Going forward, provided that the custodian's systems for propagation and the particular fund's proposed use of propagation are consistent with the PCG, the release of this PCG in final form should negate the need for funds to seek private rulings from the ATO on these issues.

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China

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Legislative developments

Ministry of Finance ("MOF") and State Administration of Taxation ("SAT") issued notices concerning implementation matters on discounting business of commercial and interbank bills

MOF and SAT jointly issued Caishui [2017] No. 58 ("**Circular 58**") on 11 July 2017 to set out certain issues for VAT reform.

Where a financial institution discounts commercial and interbank bills in the course of business, interest income arising from the bills during the holding period shall be subject to VAT. The VAT exemption which had been granted in the past for conducting interbank bill discounting business between financial institutions set forth in Caishui [2016] No. 36 will be abolished from 1 January 2018. Where a financial institution has paid VAT on interest income arising from discounted bills, and where the discounted bills were transferred to other financial institutions, the VAT exemption will continue to apply to the transferred bills.

On 14 August 2017, SAT issued Announcement 30 to further clarify certain implementation matters on discounting business of commercial and interbank bills. Starting from 1 January 2018, with regard to the discount interest arising from the initial discounting business or subsequent transfer of discounted bills business carried out by financial institutions, for which a VAT invoice shall be issued, the initial financial institution accepting the discount shall issue an ordinary VAT invoice to the applicant for the discount based on the total amount of discount interest of the notes; and for the subsequent transfer of discounted bills accepting institution shall issue an ordinary VAT invoice to the initial financial institution based on the total amount of the transfer of discounted bills interest.

Other developments

Administrative Regulations on Supervision of Financing Guarantee Companies issued

State Council issued the 'Administrative Regulations on Supervision of Financing Guarantee Companies' (State Council Order No. 683), which became effective from 1 October 2017. Financing guarantee business is defined in this regulation to cover provision of guarantees for debt financing, either in the form of borrowings or debentures.

China Securities Regulatory Commission ("CSRC") issued the 'Regulation on Liquidity Risk Management of Publicly-Offered Open-End Securities Investment Funds'

CSRC recently issued the 'Regulation on Liquidity Risk Management of Publicly-Offered Open-End Securities Investment Funds', which became effective from 1 October 2017. The regulation includes provisions relating to internal control of fund managers, fund product design, investment restrictions, subscription and redemption management, valuation and information disclosure as well as special rules on the liquidity risk management of money market funds.

Asset Management Association of China ("AMAC") released the 'Measures for Compliance Management of Securities Investment Fund Management Companies'

AMAC released the 'Measures for Compliance Management of Securities Investment Fund Management Companies', which became effective from 1 October 2017. The document comprises of five chapters - general provisions, duties on compliance management, safeguards on compliance management, self-disciplinary management, and supplementary provisions. Articles on compliance management of the subsidiaries of fund companies are also added to make the compliance management more reasonable and reliable.

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Hong Kong

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Legislative developments

Consultation report on Base Erosion and Profit Shifting ("BEPS") lays out the foundation for Hong Kong's transfer pricing regime

The Hong Kong government issued a Consultation Report on Measures to counter BEPS on 31 July 2017 (please refer to the link http://www.fstb.gov.hk/tb/en/docs/BEPS-ConsultationReport-e.pdf for full content of the Consultation Report).

The report sets out the following key updated proposals:-

- The exemption thresholds for the preparation of master and local files have been relaxed and are now based on (i) the size of the business, and (ii) related party transaction amounts as detailed in the table below. This relaxation will help to reduce the compliance burden for taxpayers.

  Specifically, taxpayers will not be required to prepare master and local files if they meet either one of the following two sets of exemptions:

(a) Based on size of business (any two of three criteria)	Threshold (HK$) per financial year
Total annual revenue	≤ $200 million
Total assets	≤ $200 million
Employees	≤ 100
(b) Based on related party transactions (for that particular category of transactions)	**Threshold (HK$) per financial year**
Transfers of properties (excludes financial assets/ intangibles)	< $220 million
Transactions in financial assets	< $110 million
Transfers of intangibles	< $110 million
Any other transactions (e.g., service income/ royalty income	< $44 million

  There is no change to the reporting threshold for filing country-by-country reports. This remains at EUR 750 million or about HK$6.8 billion.

- Domestic transactions will be included in the transfer pricing regime.
- Specific provisions will be introduced to ensure that a person who develops, enhances, maintains, protects and exploits intellectual property in Hong Kong (so-called DEMPE functions) will be compensated with a return calculated on an arm's length basis.
- Penalties for incorrect tax returns relating to non-arm's length pricing remain the same as those that apply generally for under-reporting in other tax contexts. Conditions for penalty reduction will be based on the actual facts and circumstances, with transfer pricing documentation being only one of the factors to be considered. There is no specific mention of interest being charged in addition to penalties.
- The implementation of statutory transfer pricing rules and the anticipated rise in demand for Advanced Pricing Agreements will give rise to more demands for certainty, and will likely lead to more disputes.

- Other points:-
  - Hong Kong will not impose thin capitalisation rules.
  - The Bill will not contain any safe harbour rules.
  - The time bar for claiming tax credits will be extended to six years.
  - Taxpayers will be required to take all reasonable steps to minimise the amount of foreign tax payable before claiming a tax credit.

For more details, please refer to the link below:

https://home.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/08/tax-alert-15-consultation-report-on-beps-lays-out-the-foundation-for-hong-kong-s-transfer-pricing-regime.pdf

The bill was introduced in December 2017. For more details, please refer to the link below:

https://home.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/12/tax-alert-24-hk-introduces-beps-bill.pdf

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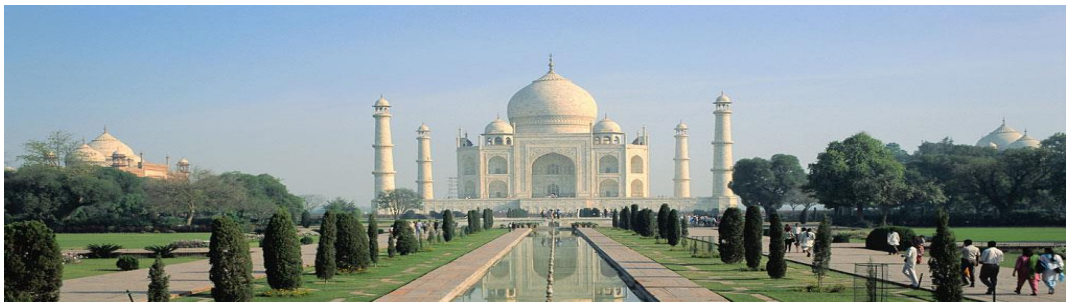
India



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Legislative developments

Mauritius signs the Multilateral Convention

On 5 July 2017, Mauritius signed the Multilateral Convention ("**MLI**") to implement tax treaty related measures to prevent BEPS.

Mauritius has kept India out of the MLI, which indicates that the tax treaty related BEPS measures will not impact investments in India with Mauritius' entities interposed, particularly the grandfathering of investments provided through the amendment to the bilateral tax treaty. Although the work on MLI has been carried out since May 2015, the amendment to the bilateral tax treaty between India and Mauritius in May 2016 only acted as a precursor to indicate that Mauritius would not include India in the provisional list to address the concerns of the overriding impact of the MLI over the bilateral tax treaty (which has now only been reiterated).

For more details, please refer to the Mauritius part of this issue or the link below:
http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-Mauritius-signs-the-Multilateral-Convention.pdf

Central Board of Direct Taxes ("CBDT") relaxes eligibility conditions to investment funds set-up by Category I or II Foreign Portfolio Investors ("FPIs") under Section 9A of the Income Tax Act ("the Act")

Section 9A of the Act provides that the eligible investment fund means a fund which was established or incorporated or registered outside India and collects funds from its members for making investments for their benefit (subject to fulfilment of certain specified conditions). The section also provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund. Further, an eligible investment fund shall not be considered a resident in India merely because the eligible fund manager, undertaking fund management activities on its behalf, is situated in India.

Relaxation of eligibility criteria

The CBDT has issued a Notification No. 77/2017 on 3 August 2017 relaxing the eligibility conditions specified in Section 9A of the Act which shall apply to an investment fund set up by a Category I and Category II FPIs registered under the Securities and Exchange Board of Indian (FPI) ("**SEBI (FPI)**") Regulations 2014. The eligibility conditions include:

- the fund has a minimum of twenty-five members who are not, direct or indirect, connected persons;
- any member of the fund along with connected persons shall not have more than 10% direct or indirect participation interest in the fund; and
- the direct or indirect aggregate participation interest of no more than ten members along with their connected persons in the fund, shall be less than 50%.

The above relaxation had earlier been extended only to the investment funds set up by the Government or the Central Bank of a foreign state or a sovereign fund or such other funds as notified by the Central Government, subject to fulfilment of notified conditions.

List of eligible countries where the investment funds can be established

Section 9A of the Act provides that the eligible investment funds should be a resident of a country which:

- India has a Double Taxation Avoidance Agreement with;
- certain agreements have been notified in the official gazette for grant of double taxation relief; or
- is established or incorporated or registered in a country or a specified territory notified by the Central Government.

Tax court case summaries

Capital gains arising to Netherlands entity on sale of shares of its Indian subsidiary deriving its value from immovable property are not taxable in India under the India-Netherlands tax treaty

The Andhra Pradesh and Telangana High Court in the case of Venenberg Facilities BV (the taxpayer) held that capital gains arising from sale of shares by the taxpayer of its Indian subsidiary which derives its value from immovable property are not taxable in India under the India-Netherlands tax treaty.

The High Court observed that the Assessing Officer and the Commissioner of Income-tax (Appeals) are incorrect in applying Article 13(1) of the tax treaty by equating alienation of a company's shares to alienation of its immovable property. The High Court concurred with Tribunal's decision that alienation of shares by the taxpayer does not fall under Article 13(1) of the tax treaty and by virtue of a residuary clause in Article 13(5) of the tax treaty, gains will be exempt from tax in India.

For more details, please refer to the link below:

http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-Venenberg-Facilities-BV-1.pdf.

Transfer of shares by Mauritian company under the group reorganisation is not taxable in India under the India-Mauritius tax treaty

The Bombay High Court in the case of JSH Mauritius Ltd. (the taxpayer) held that the capital gain arising from the transfer of shares of an Indian company by a Mauritian company is not taxable in India under the India-Mauritius tax treaty.

The High Court observed that the shares in Tata Industries Ltd ("**TIL**") were purchased and held by the taxpayer for a long period of 13 years which suggested that it is a *bona fide* transaction. The share transfer was carried out due to group reorganisation in exchange of shares in another Tata group company in India. On the basis that the taxpayer was not a shell company, the capital gain on transfer of Indian company's shares was not taxable in India under the India-Mauritius tax treaty.

For more details, please refer to the link below:

http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-JSH-Mauritius-Ltd-1.pdf

Liaison and project offices do not constitute a Permanent Establishment ("PE") in India

The Delhi High Court in the case of Mitsui & Co. Ltd. (the taxpayer) held that offices of the taxpayer and its activities cannot be regarded as its PE in India and the income directly or indirectly attributable to the said offices was not taxable in India. Merely having an office, factory or workshop, etc. does not constitute a PE. It is required that a PE should be a fixed place of business where the business of an enterprise is wholly or partly carried out.

The liaison office of the taxpayer was not in fact used for the purpose of business but was solely for the purpose of search or display or solely for the purchases of goods or collecting information or for any other activity. Therefore, it does not constitute a PE in India.

For more details, please refer to the link below:

http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-Mitsui-Co-Ltd-1.pdf

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Indonesia

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Legislative developments

Amended Controlled Foreign Company Rules

On 27 July 2017, the Ministry of Finance issued Regulation No. PMK-107/PMK.03/2017 ("**PMK-107**"), which amends the Indonesian Controlled Foreign Company ("**CFC**") rules. PMK-107 is applicable from the fiscal year 2017 and it revokes PMK-256/PMK.03/2008 and part of KMK-164/KMK.03/2002 regarding the foreign tax credits ("**FTC**") for dividends paid by a CFC.

A CFC is a non-listed foreign company, which is at least 50% (paid-up capital with/ without voting rights) owned by:

- An Indonesian taxpayer (company or individual); or
- A group of Indonesian taxpayers (companies or individuals).

The most important change under PMK-107 is that indirectly owned (non-listed) CFCs will fall under the CFC rules. An indirectly owned CFC is defined as a foreign company, which is held for at least 50% by:

- Another CFC;
- Various CFCs held by Indonesian taxpayers; or
- Various CFCs held by the same or more Indonesian parent companies.

The 50% threshold requirement should be fulfilled at the end of the fiscal year of the Indonesian taxpayer. For indirect CFCs, the threshold is determined based on the ownership of the indirectly held CFC. If a CFC is indirectly held for at least 50% by another CFC, it will be regarded as an indirectly owned CFC. The threshold is not determined proportionally. If the CFC is held for less than 50% by another CFC, but the Indonesian taxpayer also has a direct stake in it, the percentages of both stakes should be added. If at least 50% of the CFC is directly/ indirectly owned by the Indonesian taxpayer, the CFC rules apply.

If an Indonesian taxpayer owns a CFC through a trust or foundation, a "look-through" approach will be applied.

The Indonesian taxpayer has to recognize a deemed dividend from a CFC by the end of the fourth month after the CFC had submitted its local corporate income tax return. In case the CFC is not required to submit a tax return, the deadline is the end of the seventh month after the end of the CFC's fiscal year.

The deemed dividend is calculated based on the effective ownership of the Indonesian taxpayer in the CFC (i.e., proportionally). If a CFC actually pays a dividend, this amount can be offset against the previously reported deemed dividend of the last five years.

The regulation provides for a FTC on taxes paid on the actual dividend distributions. No FTC is available for the underlying corporate tax of the CFC. The FTC is limited by the lower of the following amounts (if dividends are paid from more countries, a per country limitation applies):

- The foreign income tax that should have been due under the terms of an applicable tax treaty;
- The foreign income tax actually paid or payable; or

- The proportion of the deemed dividend on the total taxable income (including the deemed dividend) multiplied by the total tax due in the Indonesian's taxpayer tax return.

A taxpayer should attach the following documents of the directly owned CFC to its Corporate Income Tax return in order to claim the FTC:

- Financial statements;
- A copy of the Corporate Income Tax return;
- A calculation or list of profits after tax for the past five years; and
- A tax payment or withholding tax slip on the actual dividend paid.

New form DGT-1 for non-resident taxpayers

The Director General of Tax ("**DGT**") issued the new Regulation PER-10/PJ/2017 ("**PER-10**") which introduces new certificate of domicile ("**CoD**") standard for non-resident taxpayers. PER-10 was effective from 1 August 2017 and revoked the Regulations PER-61/PJ/2009 (as amended by PER-24/PJ/2010) and PER-62/PJ/2009 (as amended by PER-25/PJ/2010).

Under PER-10 there are still two types of CoDs, one for banking institutions ("**form DGT-2**") and one for non-banking institutions ("**form DGT-1**"). Form DGT-2 remained largely unchanged, whereas form DGT-1 has been significantly amended.

The CoD is still valid for 12 months and the form now specifies the validity period. This may create issues for taxpayers in countries where the tax authorities do not want to specify a specific period (e.g., the UK). A possible solution would be to attach a standard CoD as issued by the local tax authorities, which should still be acceptable under PER-10. PER-10 stipulates clearly that the standard CoD must be in English.

Under the new form DGT-1, various new residency tests have been added (under Part VI), and a new set of beneficial ownership tests is introduced (under Part VII), which is only required to be filled where the non-resident taxpayer receives Indonesian dividends, interest or royalties.

Consistent with earlier regulations, PER-10 also requires taxpayers to prepare and submit withholding tax slips, even no tax is payable. These must be reported to the tax office in the period when the tax is (normally) payable.

Furthermore, it is required that certain tax exempt institutions (e.g., central banks or government institutions as mentioned in the respective tax treaties) should submit a CoD confirming their tax exempt status.

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Korea

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Legislative developments

New Top Tax Bracket and Corporate Income Tax Rate

Under the current tax law, income earned by a Korean company is subject to corporate income tax at three tier progressive rates. For the purpose of ensuring equality in taxation of corporations, the proposed tax revision includes a new tax bracket of more than KRW 200 billion with a 25% tax rate on top of the current rates. If enacted, the newly amended tax rates will apply from the fiscal year commencing on or after 1 January 2018.

Tax Base	Current Rates	Amended Rates
KRW 200 million or less	10%	10%
KRW 200 million ~ KRW 20 billion	20%	20%
KRW 20 billion ~ KRW 200 billion	22%	22%
More than KRW 200 billion		25%

Limitation of Utilization of Tax Loss Carried Forward for Domestic Corporations

Under the current tax law, tax loss can be carried forward and set off against taxable income for up to 10 years from the year in which the tax loss was incurred. According to the amendments of the Corporate Income Tax Law enacted on 15 December 2015, from the fiscal year commencing on or after 1 January 2016, a company is allowed to utilize tax loss carried forward only up to 80% of the current year's taxable income (100% for small and medium sized companies).

The proposed tax revision provides that the tax loss incurred in the fiscal year commencing on or after 1 January 2018 could be utilized to offset only up to 60% of the future taxable income, and the tax loss incurred in the fiscal year commencing on or after 1 January 2019 will be subject to a 50% limitation. However, such limitation will not apply to small and medium sized companies, companies under revitalization process, or companies under management normalization plan under the relevant laws, etc.

The proposed plan for the limitation on the tax loss utilization is summarized in the following table:

Fiscal year of tax loss incurred	Limitations on tax loss utilization	Remark
Commencing on or after 1/1/2017	80%	Current tax law
Commencing on or after 1/1/2018	60%	Proposed tax revision
Commencing on or after 1/1/2019	50%	Proposed tax revision

Extended Taxation on Capital Gains from Disposal of Securities by Non-resident

Under the current tax law, income generated from disposal of the securities or equity shares by non-resident or foreign corporation without having a permanent establishment in Korea is subject to capital gains tax in Korea. However, taxable income arising from share transfer may be exempt from Korean tax if the foreign shareholder and its related party which do not have a permanent establishment in Korea own less than 25% of the shares in the publicly listed entity at any time during the last five years and in the year when the shares are officially transferred and such share transfer is made on the Korean Stock Exchange.

According to the proposed tax revision, the shareholding ratio threshold for the capital gains tax exemption for non-resident decreased from 25% to 5% to strengthen the collection of tax on domestic sourced income of non-residents.

Once the tax revision proposal is enacted, the new rule will apply to the share transfer executed on or after 1 January 2018. As a transitional provision, the current 25% shareholding threshold will apply to the shares held by non-resident shareholder until 31 December 2018.

Restriction on Deduction of Interest Expense for Mismatched Hybrid Financial Instruments

As recommended by OECD, the proposed tax revision provides a new regulation to restrict the deduction of expenses related to international transaction of hybrid financial instruments to prevent tax avoidance by using the different tax treatments for hybrid financial instruments in different jurisdictions.

The hybrid financial instruments include financial instruments having both debt and equity natures which are treated as debt in one jurisdiction but treated as equity in the other jurisdiction. In such case, interest expenses can be deducted in one jurisdiction where it is regarded as debt, while the dividend income is not taxable in the other jurisdiction where it is treated as equity, resulting in no taxation in both jurisdictions.

Under the proposed tax revision, if the interest expenses incurred for hybrid financial instrument are paid by a domestic company to a foreign related party and part or all of such payment is not taxed in the other country in which the foreign related party resides for certain period (i.e. until the end of the recipient's fiscal year commencing within 12 months after the end of the payer's fiscal year), the domestic taxpayer is not allowed to deduct the interest expenses corresponding to the amount not taxable in the recipient's jurisdiction.

Once the tax revision proposal is enacted, the new rule will be effective from the fiscal year commencing on or after 1 January 2018.

Restriction on Deduction of Interest Expense for Multi-national Companies

As recommended by OECD, the proposed tax revision provides a new regulation to restrict the deduction of interest expense for multi-national companies.

According to the proposed tax revision, in the case where a domestic company has transaction with a foreign related party, if net interest deduction claimed by the domestic financial company exceeds 60% of the adjusted taxable income (i.e. taxable income after adjustments of depreciation expense and net interest expense), the excess amount may not be deductible for tax purposes.

Under the current thin capitalization rule, if the total amount of a Korean company's debts obtained from a foreign controlling shareholder exceeds two times of the amount of the foreign controlling shareholder's equity held in the Korean company, the amount of interest expense incurred in excess of such debts is not tax deductible.

This proposed regulation will be effective from the fiscal year commencing on or after 1 January 2019.

Expansion of Criteria for Abatement of Underreporting of Income

Under the current tax law, the penalties for under-reporting in relation to transfer pricing are waived in the following cases: (i) where, in accordance with the result of mutual agreement procedure, it is confirmed that there is no fault of taxpayer with regards to the difference between reported transaction price and the transfer price or (ii) where the taxpayer maintains supporting documents for the transfer pricing method reported to prove that such transfer pricing method is applied based on reasonable grounds.

According to the proposed tax revision, the individual company's local file can be submitted as one of supporting documents to prove the taxpayer's position as aforementioned in (ii).

If the tax revision is enacted, it will be effective from the fiscal year commencing on or after 1 January 2018.

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Malaysia

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Legislative developments

Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) Rules 2017

Pursuant to the above rules, a qualifying company is allowed to claim a deduction for the amount of expenditure incurred on issuing or offering the Sustainable and Responsible Investment ("**SRI**") sukuk approved or authorised by, or lodged with, the Securities Commission Malaysia ("**SC**") under the Capital Markets and Services Act 2007.

The deduction shall apply to SRI sukuk issued or offered in compliance with the guidelines issued by the SC where 90% of the proceeds arising from the issuance or offering of the SRI sukuk are used solely for the purpose of funding the specified SRI project.

The above Rules are effective from Year of Assessment ("**YA**") 2016 to YA 2020.

Taxation rulings and determinations

3/2017: Income Tax Treatment of Goods and Services Tax ("GST") Part III – Employee Benefits: GST Borne by An Employer

This Public Ruling explains the income tax treatment on the output tax accounted for and borne by the employer on goods or services provided with no consideration to its employees as a benefit.

4/2017: Basis Period for A Business Source for Persons other than A Company, Limited Liability Partnership, Trust Body and Co-Operative Society

This Public Ruling replaces Public Ruling No. 6/2001 published on 30 April 2001 and explains the determination of the basis period/ taxable period related to a business source of a person other than a company, limited liability partnership, trust body and co-operative society for:-

- commencing a new operation;
- changing the accounting date of the existing business; and
- an individual joining a partnership.

5/2017: Taxation of Real Estate Investment Trust or Property Trust Fund

This Public Ruling replaces Public Ruling No. 2/2015 published on 19 June 2015 and sets out the tax treatments for a real estate investment trust or property trust fund in Malaysia. It takes into account all the changes in the tax legislation made after the issuance of the Public Ruling No. 2/2015.

6/2017: Withholding Tax on Income of A Non-Resident Public Entertainer

This Public Ruling explains:

- income received by a non-resident public entertainer in Malaysia;
- deduction of tax from income received by a non-resident public entertainer; and
- consequence of not remitting tax deducted from income received by a non-resident public entertainer.

For more details about the tax rulings mentioned above, please refer to the link below:

http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=3&bt_unit=1&bt_sequ=1&CSRF_TOKEN=ca6f17573f1d8e37db4bef25045e858ef7071e6a

Country-by-Country Reporting ("CbCR") in Malaysia

The Income Tax (Country-by-Country Reporting) Rules 2016 ("**the Rules**") which became effective on 1 January 2017 apply to multinational corporation ("**MNC**") groups with a total consolidated group revenue of at least RM 3 billion in the financial year ("**FY**") preceding the reporting FY.

For the purpose of compliance, the Malaysia Inland Revenue Board ("**MIRB**") released the CbCR implementation guidance, instructions, CbCR templates and samples of notification letter for reporting and non-reporting entity.

Any constituent entity of a MNC Group that is a resident in Malaysia shall notify the Director General of the MIRB in writing if it is the ultimate holding company or the surrogate holding company, on or before the last day of the reporting FY. Malaysian-parented Group whose ultimate holding companies are Malaysian residents would need to inform the Director General of the MIRB that it is the reporting entity for the Group.

Where a constituent entity of an MNC Group that is a resident in Malaysia is not the reporting entity, the constituent entity shall notify the Director General of the MIRB in writing of the identity and tax residence of the reporting entity, on or before the last day of the reporting FY.

The CbCR is required to be submitted to the MIRB on or before 12 months from the last day of the reporting FY.

For more details, please refer to the link below:

http://www.hasil.gov.my.

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Mauritius

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Legislative developments

Corporate Tax

Tax Holidays

Income tax holidays of 8 years will be granted to the following companies as from the income year when they start their operations:

- Companies incorporated on or after 1 July 2017 and engaged in innovation-driven activities for intellectual property assets.
- Companies set up after 8 June 2017 and involved in the manufacture of pharmaceutical products, medical devices and high tech products.
- Companies engaged in exploitation and use of deep water for providing air conditioning installations, facilities and services.

Reduced corporate tax rate on export of goods

Section 44B of the Income Tax Act 1995 ("**ITA**") has been introduced to provide for income tax rate at 3% on chargeable income derived by companies engaged in the export of goods.

Such chargeable income attributable to the export of goods should be calculated as follows:

$$\frac{\text{Gross taxable income derived from export of goods}}{\text{Gross taxable income derived from all activities}} \times \text{Chargeable income}$$

Corporate Social Responsibility ("**CSR**")

Companies shall now contribute:

- At least 50% of their CSR Fund set up on or after January 2017 and up to 31 December 2018 to the National CSR Foundation; and
- At least 75% of their CSR Fund set up on or after 1 January 2019 to the National CSR Foundation.

The above CSR contributions can no longer be reduced by an amount that a company intends to spend in respect of an approved CSR programme.

Capital Allowance

Annual allowances have now been extended to the following items:

- Acquisition of solar energy unit; and
- Research and development (innovation, improvement or development of a process, product or service).

VAT and Personal Tax

Exempt bodies or persons

Exemption from payment of VAT has been extended to the following:

- Any person, who is engaged in the implementation of a project and funded by a foreign State for more than 50% of the estimated project value or concessionary financing, in respect of the procurement of goods, consultancy or other related services in relation to the implementation of the project;
- Any person operating a food processing plant and registered with the Board of Investment in respect of plant, machinery and equipment used exclusively in food processing activities; and
- Any person engaged in the construction of a purpose-built building for the provision of tertiary education and leases the building exclusively to a person approved by the Tertiary Education Commission as a person engaged in the provision of tertiary education.

Open years of assessment

The VAT Act has been amended to enable the Mauritius Revenue Authority ("**MRA**") to raise assessment without the approval of the Independent Tax Panel from 3 to 4 years preceding the last day of the taxable period.

Electronic filing of tax returns

Every company has the obligation to file its income tax return and pay taxes arising thereon electronically irrespective of the level of turnover. Failure to do so, after written notice being issued by the Director-General of the MRA as well as failure to justify the same within 7 days of the notice, would give rise to a penalty of:

- 20% of the tax payable not exceeding MUR 100,000 (approximately USD 2,850); or
- MUR 5,000 (approximately USD 140) where no tax liability is declared in the return.

Other developments

Mauritius signed the multilateral instrument implementing the treaty related BEPS provisions

On 5 July 2017, Mauritius signed the Multilateral Instrument ("**MLI**") to allow jurisdictions to swiftly implement measures developed under the Base Erosion and Profit Shifting project ("**BEPS**") to tackle tax avoidance/ evasion.

Out of its 42 Double Tax Agreements ("**DTAs**"), Mauritius has nominated 23 as potential Covered Tax Agreements ("**CTAs**"). In general, the MLI generally only becomes operative when both parties elect to treat a DTA as a CTA.

However, out of these 23 countries, 8 have not signed the MLI (i.e. Barbados, Republic of Congo, Lesotho, Madagascar, Oman, Qatar, Swaziland and United Arab Emirates).

Mauritius has adopted the following under the MLI:

- The BEPS minimum standard for preventing treaty abuse

  This consists of (i) a statement of intent that a DTA is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, and (ii) the adoption of a general anti-abuse rule, commonly known as the Principal Purpose Test ("**PPT**") as an interim measure. As far as possible, Mauritius intends to adopt a limitation on benefits provision through bilateral negotiation.

- The BEPS minimum standard for enhancing dispute resolution

  When a Mauritius resident taxpayer is taxed not in accordance with the DTA provisions, the taxpayer can seek assistance from MRA to resolve the dispute.

- Mandatory binding arbitration

  Mauritius has opted for the mandatory binding arbitration provisions to be included in the DTAs as they provide certainty to taxpayers that treaty-related disputes will be resolved within a specified timeframe.

CSR

As mentioned earlier, for CSR fund set up in the year starting 1 January 2017, companies were required to contribute 50% of their CSR fund to the National CSR Foundation and 75% in the subsequent year; It is now being proposed that the 50% contribution is maintained for another year. The remaining 50% will have to be remitted to the National CSR Foundation unless the company spends the CSR fund in an approved CSR framework.

Return of dividends by companies

Companies paying dividends exceeding MUR 100,000 to an individual, société or succession in a year should electronically submit a return to disclose the following information to the MRA in respect of the preceding income year by 15 August of each year:

- the full name of every shareholder;
- the Mauritius National ID Card of a resident shareholder or the identification number issued by the immigration officer in the case of a non-citizen; and
- the amount of dividend paid.

Global Business Sector (Amendment to the Securities Act)

Category 1 Global Business Licence ("**GBL 1**") companies which are also listed on the stock exchange of another jurisdiction will no longer be required to issue prospectus. Henceforth, only the Stock Exchange of Mauritius ("**SEM**") Listing Rules will apply.

Registration Duty Act

The lease or sublease of immovable property for operating a health institution shall be exempt from registration duty.

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New Zealand

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Legislative developments

BEPS – final Government decisions on proposals

In August 2017, the New Zealand ("**NZ**") Government released its decisions on the detailed design of a number of Base Erosion and Profit Shifting ("**BEPS**") proposals. The table below highlights the original proposals and the "final" decisions.

Proposal	Final decision
Interest limitation (thin capitalisation)	
An "interest rate cap" for related-party inbound debt based on the credit rating of the parent plus a margin. [To be drafted as a thin capitalisation rule.]	A "restricted transfer pricing rule" where the interest rate on related-party inbound debt would be set under transfer pricing rules: o ignoring certain loan terms & conditions (e.g. subordination, duration, debt levels), unless those features are also present in the taxpayer's third-party debt arrangements; and o with a rebuttable presumption that the NZ entity is supported by its foreign parent. The interest rate cap will be a "safe-harbour".
Excluding non-debt liabilities from calculation of assets for thin capitalisation purposes.	Proceed, with further consultation on the treatment of "deferred tax liabilities".
Allowing deductibility for all third party interest on certain infrastructure projects controlled by a single non-resident.	Proceed, with further consultation on technical issues.
Removing the net current valuation method as an alternative to financial statement values for thin capitalisation.	Use of the net current valuation method will be limited to valuations by an independent expert valuer.
Removing the option to measure assets and debt at year-end for thin capitalisation.	End of year valuation option retained, but with accompanying anti-avoidance rule.
Permanent Establishment ("PE") avoidance and transfer pricing	
An anti-avoidance rule targeted at large multinationals* avoiding a NZ PE by using NZ related entities to support its local sales.	Proceed, but with the rule more narrowly targeted at avoidance arrangements with further consultation on how to do this. (Note: two options are discussed – a more than merely incidental test or unilaterally adopting the MLI PE definition.)
A transfer pricing re-characterisation rule for arrangements where legal form differs to economic substance.	Proceed, with re-construction allowed based on the test in the OECD guidelines.
Shifting the burden of proof on transfer pricing matters to taxpayers.	Proceed.
Extending the period Inland Revenue can challenge transfer pricing matters from 4 to 7 years.	Proceed.

Increasing Inland Revenue's powers to deal with "uncooperative" large multinationals'* transfer pricing matters, including requiring tax on adjustments to be paid in advance.	Proceed, but not the requirement for tax to be paid in advance.
Hybrid tax mismatches	
Comprehensive anti-hybrid rules targeting: ○ Hybrid ("debt/ equity") instruments, which can give rise to a deduction/non-inclusion income ("D/ NI") outcome. ○ Hybrid ("opaque/ transparent") entities, which can give rise to a D/ NI or double deduction outcome. ○ Indirect hybrid outcomes (e.g. imported mismatches and reverse hybrid entities). ○ Branch taxation mismatches.	Proceed, with consultation on a few detailed issues. Limited grand-parenting of existing hybrids and some deferral of application of some of the (even) more complex rules. Confirm application of the rules to NZ foreign trusts when neither the foreign beneficiary nor foreign settlor are taxed.

Further consultation on detailed issues was conducted during August through October, followed by the introduction of a Tax Bill in late 2017. The Tax Bill is expected to be enacted by 30 June 2018. On that timetable, these BEPS measures will have first effect from 1 July 2018 for those with June balance dates.

2017 New Zealand General Election

New Zealand's general election was held on 23 September 2017. The previous Government led by the New Zealand National Party was replaced by a coalition led by the New Zealand Labour Party.

The New Zealand Labour Party's taxation policies include:

- Reversing the previous Government's 1 April 2018 tax changes, to be replaced with a Families Package from 1 July 2018.
- Establishing a Working Group to consider possible options for further improvement in the structure, fairness and balance of the New Zealand tax system. Implementation of any recommendations will be deferred until after the 2020 election.
- Extending the bright-line test period for taxing gains on sale of residential investment properties from 2 to 5 years and ring fencing rental losses.
- An R&D tax credit regime at 12.5%.
- Additional funding to the New Zealand Inland Revenue to combat multinational tax avoidance.
- Support for a regional fuel tax for Auckland, to fund infrastructure spending.

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Philippines

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Taxation rulings and determinations

Senate Bill No. 1592 and House Bill No. 5636 – Tax Reform for Acceleration and Inclusion ("TRAIN")

The First Package of the TRAIN is currently under way, with the Senate and House of Representatives' respective versions having been approved by each House separately. Both versions have been submitted to the bicameral conference committee for reconciliation. The harmonised and final version will be approved and signed by the President of the Republic of the Philippines.

The First Package generally includes reforms on individual taxation, VAT, excise tax and other procedural provisions including relaxation of bank secrecy for fraud cases. It is aimed to be implemented from 1 January 2018.

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Singapore

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Legislative developments

Revisions to the Financial Sector Incentive ("FSI") Schemes

The Monetary Authority of Singapore ("**MAS**") issued new circulars to release details on the revisions to the FSI schemes, which grants award holders concessionary tax rate of 5%, 10% or 12% (depending on the awards granted) on income from qualifying FSI activities.

The scope of the FSI schemes has been streamlined to remove certain restrictions which will alleviate the administrative and compliance burden of award holders. These changes will apply to new or renewal awards approved on or after 1 June 2017.

FSI award	Changes	Current tax rate	New tax rate
FSI-Standard Tier (**FSI-ST**)	*Expansion of qualifying activities* • Provision of trustee, custodian, trust management or administration services to all trusts *Restrictions lifted* • Currency restriction (i.e., Singapore dollar transactions are now included) • Counterparty restrictions in relation to provision of services for the purpose of listing on the Singapore Exchange • Investment instrument restrictions in relation to trading, investing in or providing services in respect of debt securities and equity securities • "Designated investment" requirement in respect of fund management, trustee or custodian activities *New restrictions* • Transacting in loans (other than bonds or debentures) with individuals • Trading in loans where the related collaterals are immovable property *Removed from scope* • Foreign investors and foreign mutual fund corporations for trustee, custodian, trust management or administration services • Foreign investors as counterparties for fund management, investment advisory or other financial advisory services in respect of fund management	12%	13.5%

FSI-Capital Market (**FSI-CM**)	*Restrictions lifted* • Investment instrument restrictions in relation to trading, investing in or providing services in respect of debt and equity securities • Counterparty restrictions in relation to provision of services for the purpose of listing on the Singapore Exchange	5%	5% (no change)
FSI-Derivatives Market (**FSI-DM**)	*Restrictions lifted* • Counterparty restrictions in relation to provision of services as an intermediary for transactions relating to any financial derivatives, commodity derivatives, emission derivatives or freight derivatives	5%	5% (no change)
FSI- Credit Facilities Syndication (**FSI-CFS**)	*Expansion of qualifying activities* • Onshore syndicated loans *New restriction* • Syndicated facilities relating to financing and refinancing of immovable property not relating to any prescribed asset or project	5%	5% (no change)
FSI-Headquarter Services (**FSI-HQ**)	*Restrictions lifted* • Currency restriction (i.e., Singapore dollar transactions are now included) • Counterparty restrictions in relation to managing the funds of an approved office • "Designated investment" condition in relation to managing of funds of an approved office • Counterparty restrictions in relation to providing guarantees, performance bonds, standby letters of credit and services relating to remittances have been simplified to "financial institutions"	10%	10% (no change)
FSI-Fund Management (**FSI-FM**)	*Restrictions lifted* • "Designated investment" and "qualifying investor" requirements in respect of fund management, investment advisory or other financial advisory services in respect of fund management *Removed from scope* • Foreign investors as counterparties for fund management, investment advisory or other financial advisory services in respect of fund management	10%	10% (no change)
FSI-Trustee Companies (**FST-TC**)	*Expansion of qualifying activities* • Provision of trustee, custodian, trust management or administration services to all trusts	12%	12% (no change)

	Restrictions lifted "Designated investment" requirements in respect of trustee or custodian, trust management or administration services *Removed from scope* • Foreign investors and foreign mutual fund corporations for trustee and custodian services		

Goods and Services Tax ("GST") remission on expenses for prescribed funds managed by prescribed fund managers in Singapore

Under the GST remission scheme, funds that meet all the relevant qualifying conditions should be able to recover GST incurred on all business expenses (except disallowed expenses under the GST Regulations 26 and 27) based on a fixed recovery rate determined annually, without being required to register for GST. Currently, the GST remission scheme is available to qualifying funds up till 31 March 2019.

The fixed recovery rate for expenses incurred during the period from 1 January 2018 to 31 December 2018 is 88%.

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Sri Lanka

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Legislative developments

New Inland Revenue Act ("New IRA") Released

The New IRA changes the entire income tax concept of Sri Lanka. The features of the New IRA include:

- The sources of income have been condensed and re-classified under four heads, these heads are as follows: employment, business, investment and other;
- A three tiered tax structure has been introduced. Banks and financial institutions will be taxable at 28% while the realization of investment assets will be taxable at 10%;
- The profits and losses of the banking business must be calculated separately;
- A new formula has been introduced to compute the income tax for life insurance business;
- Rules on utilization of tax losses and capital allowance have been revised;
- The scope of withholding tax has been expanded and withholding rates have been revised;
- Exemptions have been streamlined. Most of the existing exemptions available for institutions, interest and dividends have been withdrawn;
- The allowable expenses and the disallowable expenses have been reclassified;
- Major changes have been introduced to the existing tax administrative provisions.

Other developments

New Foreign Exchange Act ("the Act") Released

Sri Lanka released new foreign exchange act with the features broadly summarised as follows:

- The Act will replace the existing Exchange Control Act.
- The Act permits all foreign currency transactions unless specifically restricted.
- Foreign exchange amnesty has been introduced for Sri Lankan residents who remit foreign currency held outside Sri Lanka
- The Act became effective on 20 November 2017.

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Taiwan

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Legislative developments

Proposed Taiwan income tax reform

Ministry of Finance ("**MOF**") has proposed to reform the current Income Tax Act to:

- simplify the tax system;
- adjust the tax rate structure of individual income tax ("**IIT**"), corporate income tax ("**CIT**"), and the surtax on undistributed earnings ("**Surtax**"); and
- ease the income tax burden on wage earners and mid and low-income earners.

The draft bill is currently under review by the Legislature. The key points are broadly summarized below:

IIT treatment on dividend income for individual residents (i.e. the domestic individual investors)

- Abolishing the imputation tax system
- Two alternative tax plans to tax the dividends:
  - Plan A will exempt 37% of the dividend income from income tax, with the remaining balance to be included in individual investors' IIT return and subject to tax.
  - Plan B will allow the individual investors to choose between two options (whichever gives more favourable outcome):

    Option 1 - will tax all dividend income as part of individual income, individual investor can recognize 8.5% of the dividend income as being tax deductible amount (up to NT$80,000 as the maximum allowable deduction amount for each household).

    Option 2 - the dividend will be taxable separately at a flat rate of 26% and not included as part of the individual taxable income.

Withholding tax ("**WHT**") treatment on dividend income for non-residents (i.e. the foreign investors)

- Surtax paid on undistributed earnings cannot be used to offset against the WHT imposed on the dividend distributed to foreign investors.
- WHT rate on dividend income is increased from 20% to 21% to foreign investors.

CIT

- The CIT rate is increased to 20% (from 17%). Companies will no longer be required to establish, record, calculate, and distribute of Imputation Credits Account ("**ICA**") account.
- The decrease of Surtax rate to 5% (from 10%).
- The tax transparent treatment of sole-proprietorship and partnership structures. The income from these structures will be subject to IIT at the sole proprietor and partner's level.
- Dividends received by resident corporate shareholders from their investment in other resident companies are likely to remain exempt from CIT.

IIT

- The 45% tax rate bracket for net consolidated income over NTD 10 million will be abolished. The highest tax rate bracket will be restored to 40%.
- Upward adjustment of the following three deductions: Standard deduction will be raised from NTD 90,000 to NTD 110,000. The amount will be doubled for taxpayers with a spouse. Special deductions for income from salaries/ wages and special deductions for disabled and handicapped will increase from NTD 128,000 to NTD 180,000, respectively.

The proposed implementation dates are set as follows:

- Individual dividend income tax for domestic investors and individual income tax will become effective from 1 January 2018, i.e., applicable for filing FY 2018 individual income tax return in 2019.
- The increased withholding tax rate will be effective from 1 January 2018. Considering the levy of surtax is in the year subsequent to the CIT reporting, the abolishment of creditable surtax will be effective from 1 January 2019.
- The adjusted tax rate and new tax regime for sole-proprietorship and partnership will be applicable upon filing FY 2018 corporate income tax return and surtax return. To work in conjunction with the new dividend income tax regime, the abolishment of imputation credit account will be effective from 1 January 2018.

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Thailand

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Other developments

New financial instruments accounting standard

The new financial instruments standard, Thai Financial Reporting Standard 9 ("**TFRS 9**"), will apply to all publicly accountable entities from 2019. The new standard introduces major changes to classification and measurement of financial assets and liabilities and record of impairment. TFRS 9 also introduces a new hedge accounting model which is aligned with risk management and extensive new disclosures.

Given certain areas of the TFRS 9 may not be acceptable under Thai tax laws, the impact of the amendments to the accounting standard is still under consideration and evaluation by the relevant government authorities as well as the commercial associations in Thailand.

Functional currency

According to the Thai Accounting Standard ("**TAS**") 21, an entity is required to determine a functional currency for its operation based on the primary economic environment where it operates and to record transactions.

Therefore, for accounting purposes, a Thai company may select a functional currency other than Thai Baht. Under the current tax laws, the use of foreign functional currency ("**FFC**") is not permitted. The Revenue Department ("**TRD**") is currently considering amending the Revenue Code to allow companies to adopt the FFC application in computing the corporate income tax. The draft legislation was released in July and the key highlights are summarized below:

- A company wishing to adopt the FFC application will be required to obtain approval from the Director General of the TRD.
- A company which adopts Thai Baht as its functional currency may elect to use the average between the buying and selling rates announced by the Bank of Thailand ("**BOT**") to convert non-Thai Baht denominated assets and liabilities at the end of the accounting period. Similarly, a company that adopts FFC may elect to use the average between the buying and selling rates announced by the BOT to convert non-FFC denominated assets and liabilities at the end of the accounting period.
- An entity that adopts the FFC application needs to convert non-FFC assets and liabilities acquired or paid during the accounting period to its FFC at the date of the acquisition or payment in accordance with the rules and conditions prescribed by the Director General of the TRD (which are yet to be released).
- Corporate income tax returns, mid-year and annual, will still need to be submitted in Thai Baht and the tax liability needs to be paid in Thai Baht, even where the FFC application has been adopted. The average between the buying and selling rates for the first 6-months and 12 months of an accounting period, as determined by the BOT, will need to be used for the FFC conversion for the mid-year corporate income tax return and the annual corporate income tax submission respectively. Foreign exchange gains and losses arising from the FFC application will not be taxable or deductible.

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Vietnam

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Legislative developments

New regulations on procedures for carrying out banking supervision

The State Bank of Vietnam ("**SBV**") issued Circular No.08/2017/TT-NHNN ("**Circular 08/2017**") on 1 August 2017 on procedures for banking supervision. Circular 08/2017 applies to:

- Inspectors and supervisors of the banking sector;
- SBV municipal and provincial branches under the central government;
- credit institutions and foreign bank branches; and
- agencies, organizations and individuals related to the supervision of credit institutions and foreign bank branches.

Circular 08/2017 includes 4 Chapters and 25 Articles:

- Chapter I: General provisions stipulating the governing scope, implementers, interpretation, principles of banking supervision, substances and orders and procedures for banking supervision.
- Chapter II: Specific provisions for stipulating orders, procedures for banking supervision (including 6 Items 14 Articles). Chapter II consists of the legal framework regulations and steps of banking supervision.
- Chapter III: Responsibilities of institutions concerning with banking supervision stipulates responsibilities of the Banking Supervision Agency, SBV municipal and provincial branches under the central government, other SBV relevant entities and banking supervised objects.
- Chapter IV: Implementation effectiveness and implementation responsibility.

Circular 08/2017 became effective from 1 December 2017.

New Regulations on "Buy, Sell Non-performing Loans" ("NPL") and "NPL Resolution of Vietnam Asset Management Company" ("VAMC")

SBV issued Circular No.09/2017/TT-NHNN ("**Circular 09/2017**") on 14 August 2017 to make amendments to Circular No.19/2013/TT-NHNN dated 6 September 2013. Circular 09/2017 includes Articles which are broadly the revision and supplement any of:

- the interpretation of terms relating to debts and bad debts;
- the application and determination of the NPLs, deduction level, method of deduction for risk provisions;
- the conditions which NPLs shall be bought by the VAMC at market value with the specific requirements;
- the provisions on the implementation of purchasing NPLs at market price, specifying regulations on procedures VAMC must conduct before buying bad debts at price market;
- the regulations on exempting and decreasing overdue interest, fees, fine for bad debts bought with special bonds;
- the regulations relating to principle on selling the purchased NPLs;

- the regulations relating to selling bad debts which were bought at market price; and
- the regulations on selling collateral assets of bad debt purchased with special bonds.

Circular 09/2017 became effective from 15 August 2017.

New regulations on bank guarantee

SBV issued Circular No.13/2017/TT-NHNN ("**Circular 13/2017**") was released by the SBV on 29 September 2017 which amends and supplements Circular No. 07/2015/TT-NHNN dated 25 June 2016 in respect of banking guarantee. Broadly speaking, Circular 13/2017 sets out the following:

- Amending and supplementing contents relating to bank guarantee activities in selling, renting houses to be formed in the future:
  - Establishing the list of commercial banks qualified to perform guarantee activities;
  - Stipulating the steps of guarantee implementation; and
  - Determination of the balance of guarantee given to project owner.
- Entities eligible to participate in the guarantee transactions
- Scope of guaranteed obligations
- Regulations of the relationship between the guarantee commitment and the contract under which contractual obligations are guaranteed

New regulations on methods of calculation interests on deposit in deposit and credit activities between credit institutions ("CIs") and customers

On 29 September 2017, SBV issued Circular No. 14/2017/TT-NHNN ("**Circular 14/2017**") on regulating methods of interest calculation on deposit in deposit and credit activities between CIs and customers. Circular 14/2017 replaces Decision No. 652/2001/QD-NHNN dated 17 May 2001. Broadly speaking, Circular 14/2017 sets out the following:

- regulating the methods of calculating interests arising in deposit and credit activities between CIs and branches of foreign banks with customers;
- regulating that interest rate should be calculated according to the annual interest rate; and
- stipulating a method of calculating interest to be used as a basis for interest rate/ transparency.

Circular 14/2017 became effective from 1 January 2018.

The State Bank of Vietnam reduced the interest rates since 10 July 2017

On 7 July 2017, SBV issued Decision No. 1424/QD-NHNN and Decision No. 1425/QD-NHNN on reducing the interest rates (effected since 10 July 2017). Accordingly, Decision No. 1424/QD-NHNN stipulates interest rates of The State Bank of Vietnam as below:

- Refinancing interest rate - 6.25% per year.
- Rediscount interest rate - 4.25% per year.
- Overnight – lending interest rate in interbank e-payment and lending interest rate to cover the capital shortage of clearing payment of The State Bank of Vietnam for banks is 7.25% per year.
- In a nutshell, the interest rates are reduced by 0.25%.

In the meantime, Decision No. 1425/QD-NHNN stipulates the peak of the lending amount for short-term in VND with the regulation of Circular 39/2016/TT-NHNN as below:

- CIs or foreign bank branch - 6.5% per year;
- People's credit fund and Micro financial institution - 7.5% per year.

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